

By the Committee on Health Care; and Senator Peaden

587-1681E-05

1 A bill to be entitled

2 An act relating to adverse medical incidents;

3 creating s. 381.028, F.S.; providing a short

4 title; providing a purpose; defining terms;

5 specifying patients' right of access to records

6 relating to an adverse medical incident;

7 prohibiting the disclosure of the identity of

8 certain patients; providing for maintaining

9 privacy restrictions imposed by federal law;

10 providing for the applicability of s. 25, Art.

11 X of the State Constitution; providing for

12 applicability of this section; providing

13 restrictions upon the use of the records;

14 providing for the identification and production

15 of the records; providing for fees charged for

16 copies of records; providing an effective date.

17

18 Be It Enacted by the Legislature of the State of Florida:

19

20 Section 1. Section 381.028, Florida Statutes, is

21 created to read:

22 381.028 Adverse medical incidents.--

23 (1) SHORT TITLE.--This section may be cited as the

24 "Patients' Right-to-Know About Adverse Medical Incidents Act."

25 (2) PURPOSE.--It is the purpose of this act to

26 implement s. 25, Art. X of the State Constitution. The

27 Legislature finds that this section of the State Constitution

28 is intended to grant patient access to records of adverse

29 medical incidents, which records were made or received in the

30 course of business by a health care facility or provider, and

31 not to repeal or otherwise modify existing laws governing the

1 use of these records and the information contained therein.
2 The Legislature further finds that all existing laws extending
3 criminal and civil immunity to persons providing information
4 to quality-of-care committees or organizations and all
5 existing laws concerning the discoverability or admissibility
6 into evidence of records of an adverse medical incident in any
7 judicial or administrative proceeding remain in full force and
8 effect.

9 (3) DEFINITIONS.--As used in s. 25, Art. X of the
10 State Constitution and this act, the term:

11 (a) "Agency" means the Agency for Health Care
12 Administration.

13 (b) "Adverse medical incident" means medical
14 negligence, intentional misconduct, and any other act,
15 neglect, or default of a health care facility or health care
16 provider which caused or could have caused injury to or the
17 death of a patient, including, but not limited to, those
18 incidents that are required by state or federal law to be
19 reported to any governmental agency or body, incidents that
20 are reported to any governmental agency or body, and incidents
21 that are reported to or reviewed by any health care facility
22 peer review, risk management, quality assurance, credentials,
23 or similar committee or any representative of any such
24 committee.

25 (c) "Department" means the Department of Health.

26 (d) "Have access to any records" means, in addition to
27 any other procedure for producing the records provided by
28 general law, making the records available for inspection and
29 copying upon formal or informal request by the patient or a
30 representative of the patient, provided that current records
31 that have been made publicly available by publication or on

1 the Internet may be provided by reference to the location at
2 which the records are publicly available.

3 (e) "Health care provider" means a physician licensed
4 under chapter 458, chapter 459, or chapter 461.

5 (f) "Health care facility" means a facility licensed
6 under chapter 395.

7 (g) "Identity" means any "individually identifiable
8 health information" as defined by the Health Insurance
9 Portability and Accountability Act of 1996 or its implementing
10 regulations.

11 (h) "Patient" means an individual who has sought, is
12 seeking, is undergoing, or has undergone care or treatment in
13 a health care facility or by a health care provider.

14 (i) "Privacy restrictions imposed by federal law"
15 means the provisions relating to the disclosure of patient
16 privacy information under federal law, including, but not
17 limited to, the Health Insurance Portability and
18 Accountability Act of 1996 (HIPAA), Public Law 104-91, and its
19 implementing regulations, the Federal Privacy Act, 5 U.S.C. s.
20 552(a), and its implementing regulations, and any other
21 federal law, including, but not limited to, federal common law
22 and decisional law, that would prohibit the disclosure of
23 patient privacy information.

24 (j) "Records" means the final report of any adverse
25 medical incident. Medical records that are not the final
26 report of any adverse medical incident, including drafts or
27 other nonfinal versions; notes; and any documents or portions
28 thereof which constitute, contain, or reflect any
29 attorney-client communications or any attorney-client work
30 product may not be considered "records" for purposes of s. 25,
31 Art. X of the State Constitution and this act.

1 (k) "Representative of the patient" means a parent of
2 a minor patient, a court-appointed guardian for the patient, a
3 health care surrogate, or a person holding a power of attorney
4 or notarized consent appropriately executed by the patient
5 granting permission to a health care facility or health care
6 provider to disclose the patient's health care information to
7 that person. In the case of a deceased patient, the term also
8 means the personal representative of the estate of the
9 deceased patient; the deceased patient's surviving spouse,
10 surviving parent, or surviving adult child; the parent or
11 guardian of a surviving minor child of the deceased patient;
12 or the attorney for any such person.

13 (4) PATIENTS' RIGHT OF ACCESS.--Patients have a right
14 to have access to any records made or received in the course
15 of business by a health care facility or health care provider
16 relating to any adverse medical incident. In providing access
17 to these records, the health care facility or health care
18 provider may not disclose the identity of patients involved in
19 the incidents and shall maintain any privacy restrictions
20 imposed by federal law.

21 (5) APPLICABILITY.--Section 25, Art. X of the State
22 Constitution applies to records created, incidents occurring,
23 and actions pending on or after November 2, 2004. Section 25,
24 Art. X of the State Constitution does not apply to records
25 created, incidents occurring, or actions pending before
26 November 2, 2004. A patient requesting records on or after
27 November 2, 2008, shall be eligible to receive records created
28 within 4 years before the date of the request.

29 (6) USE OF RECORDS.--

30 (a) This section does not repeal or otherwise alter
31 any existing restrictions on the discoverability or

1 admissibility of records relating to adverse medical incidents
2 otherwise provided by law, including, but not limited to,
3 those contained in ss. 395.0191, 395.0193, 395.0197, 766.101,
4 and 766.1016, or repeal or otherwise alter any immunity
5 provided to, or prohibition against compelling testimony by,
6 persons providing information or participating in any peer
7 review panel, medical review committee, hospital committee, or
8 other hospital board otherwise provided by law, including, but
9 not limited to, ss. 395.0191, 395.0193, 766.101, and 766.1016.

10 (b) Except as otherwise provided by act of the
11 Legislature, records of adverse medical incidents, including
12 any information contained therein, obtained under s. 25, Art.
13 X of the State Constitution, are not discoverable or
14 admissible into evidence and may not be used for any purpose,
15 including impeachment, in any civil or administrative action
16 against a health care facility or health care provider. This
17 includes information relating to performance or
18 quality-improvement initiatives and information relating to
19 the identity of reviewers, complainants, or any person
20 providing information contained in or used in, or any person
21 participating in the creation of the records of adverse
22 medical incidents.

23 (7) PRODUCTION OF RECORDS.--

24 (a) Pursuant to s. 25, Art. X of the State
25 Constitution, the adverse medical incident records to which a
26 patient is granted access are those of the facility or
27 provider of which he or she is a patient and which pertain to
28 any adverse medical incident affecting the patient or any
29 other patient which involves the same or substantially similar
30 condition, treatment, or diagnosis as that of the patient
31 requesting access.

1 **(b)1. Using the process provided in s. 395.0197, the**
2 **health care facility shall be responsible for identifying**
3 **records as records of an adverse medical incident, as defined**
4 **in s. 25, Art. X of the State Constitution.**

5 **2. Using the process provided in s. 458.351, the**
6 **health care provider shall be responsible for identifying**
7 **records as records of an adverse medical incident, as defined**
8 **in s. 25, Art. X of the State Constitution, occurring in an**
9 **office setting.**

10 **(c)1. Fees charged by a health care facility for**
11 **copies of records requested by a patient under s. 25, Art. X**
12 **of the State Constitution may not exceed the reasonable and**
13 **actual cost of complying with the request, including a**
14 **reasonable charge for the staff time necessary to search for**
15 **records and prevent the disclosure of the identity of any**
16 **patient involved in the adverse medical incident through**
17 **redaction or other means as required by the Health Insurance**
18 **Portability and Accountability Act of 1996 or its implementing**
19 **regulations. The health care facility may require payment, in**
20 **full or in part, before acting on the records request.**

21 **2. Fees charged by a health care provider for copies**
22 **of records requested by a patient under s. 25, Art. X of the**
23 **State Constitution may not exceed the amount established under**
24 **s. 456.057(16), which may include a reasonable charge for the**
25 **staff time necessary to prevent the disclosure of the identity**
26 **of any patient involved in the adverse medical incident**
27 **through redaction or other means as required by the Health**
28 **Insurance Portability and Accountability Act of 1996 or its**
29 **implementing regulations. The health care provider may require**
30 **payment, in full or in part, before acting on the records**
31 **request.**

1 (d)1. Requests for production of adverse medical
2 incident records shall be processed by the health care
3 facility or health care provider in a timely manner, after
4 having a reasonable opportunity to determine whether or not
5 the requested record is a record subject to disclosure and to
6 prevent the disclosure of the identity of any patient involved
7 in the adverse medical incident through redaction or other
8 means.

9 2. A request for production of records must be
10 submitted in writing and must identify the patient requesting
11 access to the records by name, address, and the last four
12 digits of the patient's social security number; describe the
13 patient's condition, treatment, or diagnosis; and provide the
14 name of the health care providers whose records are being
15 sought.

16 Section 2. This act shall take effect upon becoming a
17 law.

18
19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
20 COMMITTEE SUBSTITUTE FOR
21 Senate Bill 938

22 The Committee Substitute differs from SB 938 in the following
23 ways:

24 A new section of law is created in chapter 381, F.S., to
25 require facilities and practitioners to give patients access
26 to records of adverse medical incidents which must be provided
27 under the requirements of s. 25, Art. X of the State
28 Constitution. Procedures are established for provision of the
29 records. The bill provides patients access to records of
30 adverse medical incidents that occurred on or after November
31 2, 2004. The bill defines terms; specifies patients' right of
access to records relating to an adverse medical incident;
prohibits the disclosure of the identity of certain patients;
provides for maintaining privacy restrictions imposed by
federal law; provides restrictions on the use of the records;
provides a process for the identification and production of
the records; and provides for fees charged for copies of
records.